

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding the  
Implementation of the Suspension of Direct  
Access Pursuant to Assembly Bill 1X and  
Decision 01-09-060.

Rulemaking 02-01-011  
(Filed January 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING JOINT MOTION FOR PARTICIPATION BY THE  
DEPARTMENT OF WATER RESOURCES**

On March 1, 2002, a motion was filed by California Industrial Users intervenor group, California Large Energy Consumers Association, California Manufacturers and Technology Association, and Energy Users and Producers Coalition ("Joint Parties") in the Direct Access phase of this proceeding.

The Joint Parties move that the Commission issue an order which (1) requires the California Department of Water Resources ("DWR") to appear as a party in this proceeding and to provide witnesses, attend public hearings and provide all materials necessary to facilitate the Commission's completion of this proceeding; and (2) in connection with the provision of such materials, to allow all parties willing to sign an appropriate non-disclosure agreement or stipulated protective order to have full access to the computer models and modeling information DWR has utilized and will utilize to establish sums which DWR alleges are properly recoverable from direct access customers.

Replies to the motion were filed on March 8, 2002. Replies were filed by the Commission's Office of Ratepayer Advocates, Pacific Gas & Electric

Company, and jointly by the Alliance for Retail Energy Markets and the Western Power Trading Forum. A response was also filed by DWR.

Based on certain statements made by DWR in its e-mail to parties on February 25, concerning the nature and extent of DWR's planned participation in this proceeding, the Joint Parties express concerns that DWR does not intend to participate in the proceeding as a full party. DWR will only provide an "illustrative" analysis based on the use of three models to derive a customer cost responsibility charge. The Joint Parties argue that DWR's representations as to the extent of its participation fail to provide assurances that necessary information will be made available to parties relating to the following areas:

- (1) A description of the source of all input data;
- (2) The complete set of input data (input file) as used in the sponsoring party's computer run(s);
- (3) Documentation sufficient for an experienced professional to understand the basic logical processes linking the input data to the output, including but not limited to a manual which includes:
  - (i) A complete list of variables (input record types), input record formats, and a description of how input files are created and data entered as used in the sponsoring party's computer model(s).
  - (ii) A complete description of how the model operates and its logic. This description may make use of equations, algorithms, flow charts, or other descriptive techniques.
  - (iii) A description of a diagnostics and output report formats as necessary to understand the model's operation.
- (4) A complete set of output files relied on to prepare or support the testimony or exhibits; and

(5) A description of post-processing requirements of the model output.

The Joint Parties argue that this sort of information is basic to analysis of computer models in proceedings before the Commission. A party that bases testimony or exhibits in a proceeding on a model must provide such information, as referenced above, to other parties either as part of the testimony or exhibit, or in workpapers. (Rule 74.3(a) & (b).)

Moreover, the Joint Parties argue that the Rate Agreement, adopted by the Commission in D.02-02-051, requires participation by DWR upon Commission request in any proceeding “in connection with” the establishment of charges pursuant to AB1X. Under Section 7.2 of the Rate Agreement, quoted above, upon the request of the Commission, DWR must participate substantially in “any Commission proceedings . . . in connection with the establishment of Power Charges and Bond Charges by the Commission.”

The parties filing responses all support the motion to require DWR to become a party. The parties in support of the motion argue that failure to require DWR to participate as a full party in the proceeding will result in delays and litigation over any decision ultimately issued. In particular, parties argue that full access to DWR’s computer models is required in order to ascertain that the total amount to be collected for direct access cost responsibility has been properly determined and to enable parties to develop their own proposals based on a common set of assumptions and variables.

### **Position of DWR**

By letter dated March 8, 2002, addressed to Commissioner Geoffrey Brown and ALJ Thomas Pulsifer, and served on all Commissioners and parties of record, the Deputy Director of the DWR provided comments in response to the Motion. The Deputy Directory, states that DWR intends to abide by any request

made by the Commission to provide witnesses, attend public hearings and provide materials necessary to facilitate the Commission's proceedings addressing the establishment of "Power Charges" and "Bond Charges" pursuant to the Rate Agreement. DWR, however, does not intend to intervene as a party in the Commission's proceedings to sponsor exhibits or advocate a specific position with respect to the adoption of a specific charge. DWR denies that the terms of the Rate Agreement require it to become a party.

DWR also cites Water Code Section 80016: "All state agencies . . . shall and are hereby authorized to, at the request of the Department, give the Department reasonable assistance or other cooperation in carrying out the purposes of [Division 27 of the Water Code (Purchase and Sale of Electric Power) enacted by AB 1X]." DWR argues that the statute anticipates a cooperative working relationship between the Commission and the DWR, but does not contemplate DWR intervening as a party in Commission proceedings.

By providing an analysis of Direct Access charges to the Commission and parties, DWR states that it is not advocating a position or attempting to prejudge the Commission's proceeding on Direct Access cost responsibility. DWR recognizes the Commission's authority and expertise to address cost responsibility and rate design issues and agrees to assist the Commission in its effort to complete this proceeding.

## **Discussion**

Consistent with the provisions of the Rate Agreement and in the interests of developing a proper record in this proceeding, good cause has been shown for making DWR a formal party of record to this proceeding. The Rate Agreement provides that DWR will provide witnesses, attend public hearings and provide materials to facilitate the Commission's completion of its proceedings in

connection with the establishment of Power Charges or Bond Charges.<sup>1</sup> The cost responsibility charges that are the subject of this proceeding include such charges.

Making DWR a formal party to the proceeding will promote consistency in the relationships between DWR and other parties with respect to discovery and in presentation of testimony in the proceeding. The concerns raised by parties regarding access to computer models have already been addressed by DWR's voluntary cooperation in providing access to the PROSYM model for those parties that enter into an appropriate nondisclosure agreement with DWR.

Parties raise the concern that because DWR has offered to provide only an "illustrative" analysis of direct access liability, parties will be precluded from being able to obtain information on DWR's input assumptions (e.g., gas and electric prices, load projections, and seasonal consumption variations). Merely because DWR's analysis is "illustrative," however, DWR is still expected to provide responsive information to parties regarding underlying input assumptions. The point of an "illustrative" analysis is not to erect barriers between parties and necessary discovery underlying DWR's analysis, but rather, to provide a framework within which parties can develop their own analysis and apply whatever factual input assumptions they deem appropriate. If, however, parties should encounter obstacles in eliciting necessary information from DWR, they have continuing recourse to file motions, identifying the specific information that is sought, and asking for Commission intervention in obtaining the information. The Commission will review any such motions, and determine

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<sup>1</sup> See Rate Agreement Section 7.2

what actions may be warranted to provide discovery to enable testimony to be prepared and a full record to be developed.

Moreover, parties are not necessarily obliged to rely on the analysis, or supporting assumptions, provided by DWR on an “illustrative” basis in presenting their own independent analysis concerning cost responsibility for direct access customers. The DWR analysis is meant to facilitate parties in their own analysis and preparation of testimony, but not to preclude them from conducting their own analysis, submission of evidence, or presentation of testimony.

As a party to the proceeding, DWR will be subject to the same rights and duties as any other party in this proceeding pursuant to the Commission’s Rules of Practice and Procedure. DWR, as a party, is therefore subject to the Commission’s rules concerning reporting of ex parte communications. DWR shall be expected to provide prepared testimony and sponsoring witnesses under the schedule previously adopted in this proceeding for testimony and evidentiary hearings. DWR’s testimony shall provide explanation and supporting documentation necessary to understand and validate its analysis of cost responsibility charges for direct access and departing load customers.

Although parties’ motion was filed in the Rate Stabilization Dockets (A.00-11-038 et al.), the Commission has subsequently transferred the cost responsibility phase of that proceeding into the Direct Access Rulemaking (R.02-01-011). Accordingly, this ruling is being issued under the R.02-01-011 Docket, and is being served on parties in this proceeding. DWR is being made a party for purposes of this proceeding only.

**IT IS RULED** that:

1. The motion of the Joint Parties is hereby granted.
2. The Department of Water Resources (DWR) is hereby made a party of record in Rulemaking (R.) 02-01-011, subject to the same rights and duties as any other party under the Commission's Rules of Practice and Procedure.
3. DWR shall produce prepared testimony and sponsoring witnesses in accordance with the schedule previously adopted for this proceeding, explaining and providing any necessary supporting documentation to validate its modeling analysis of cost responsibility charges for direct access and departing load customers.

Dated May 2, 2002, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Joint Motion for Participation by the Department of Water Resources on all parties of record in this proceeding or their attorneys of record.

Dated May 2, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.